

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA  
Savannah Division

IN RE: ) Chapter 7 Case  
 ) Number 85-40555  
DIAMOND MANUFACTURING CO., INC. )  
 ) FILED  
Debtor ) at 10 O'clock & 21 min A.M.  
 ) Date: 10-18-90  
\_\_\_\_\_)

ORDER

By order dated July 26, 1990 this court authorized pursuant to 11 U.S.C. 327 W. Jan Jankowski, the Chapter 7 trustee to employ the engineering firm of Hussey, Gay, Bell & DeYoung, Inc. The order stipulated that compensation for such professional services were to be later fixed and determined by the court in such manner as the court may from time to time direct. On September 17, 1990 the firm submitted a statement for services to the trustee and in turn the trustee applied for court approval to pay the invoice. The Office of the United States Trustee has indicated that it has no objection to the application. In particular, the application itemizes the services rendered as "professional services in connection with the environmental investigation pursuant to lawsuit filed by the GPA in the above referenced Estate". The statement of services submitted by Hussey, Gay, Bell & Deyoung, Inc. provides:

Studies Reports and Soils,  
Principal Engineer 9 hours @ \$95.00 per hour \$855.00  
Clerical 3 hours at \$25.00 per hour 75.00  
total 12 hours \$930.00

Within the jurisdiction of the Court of Appeals ~for the Eleventh Circuit

professional fees are determined in accordance with the lodestar equation enunciated in Norman v. Housing Authority of Montgomery, 836 F.2d 1292, (11th Cir. 1988).

Under the lodestar equation, the amount of reasonable compensation is determined by multiplying a reasonable hourly rate which is based upon the hourly rate of comparable professionals in a particular area, by the time reasonably expended in performing the task at hand. Norman supra. See also 11 U.S.C. 330<sup>1</sup> Bankruptcy Rule 2016(a)<sup>2</sup>. By a previous

---

<sup>1</sup>11 U.S.C. §330 provides in pertinent part:

(a) After notice to any parties in interest and to the United States Trustee and a hearing, and subject to sections 326, 328 and 329 of this title [11], the court may award . . . to a professional employed under section 327 . . . of this title [11], . . .

(1) reasonable compensation for actual necessary services rendered by such professional person . . . and by any paraprofessional person employed by such . . . professional person . . . based on the nature, the extent, and the value of such services, the time spent on such services, and the cost of comparable services other than in a case under this title [11]; and

(2) reimbursement for actual, necessary expenses.

<sup>2</sup>Bankruptcy Rule 2016(a) provides:

(a) APPLICATION FOR COMPENSATION FOR REIMBURSEMENT. An entity seeking interim or final compensation for services, or reimbursement of necessary expenses, from the estate shall file with the court an application setting forth a detailed statement of (1) the services rendered, time expended and expenses incurred, and (2) the amounts requested. An application for compensation shall include a statement as to what payments have theretofore been made or promised to the applicant for services rendered or to be rendered in any capacity whatsoever in connection with the case, the sources of the compensation so paid or promised, whether any compensation previously received has been shared and whether an agreement or understanding exists between the applicant and any other entity for the sharing of compensation received

application submitted in this case, this court has approved an hourly rate of Ninety-Five (\$95.00) Dollars per hour for the principal engineer as a reasonable hourly rate. In approving an hourly rate of Ninety-Five and No/100 (\$95.00) Dollars for the professional, an engineer, overhead expenses necessary in the maintenance of the professional's office are considered an integral

part of the professional hourly rate approved. In re: D'Lite of America, Inc., 92 B.R. 554 (Bankr. N.D. Ga. 1988). In the application under consideration, the trustee seeks authorization to pay in addition to the fees charged by the principal engineer at a rate of Ninety-Five and No/100 (\$95.00) Dollars, a charge for clerical services at the rate of Twenty-Five and No/100 (\$25.00) Dollars per hour totaling Seventy-Five and No/100 (\$75.00) Dollars. Clerical services are a component of the general office overhead and are not separately compensable items. See e.g. In re: Bilgutay, 108 B.R. 333 (Bankr. M.D. Fla. 1989) (administrative overhead not compensable); In re: Belknap, Inc., 103 B.R. 842 (Bankr. W.D. Ky. 1989) (clerical and computerized legal research expenses are overhead); In re: Washington Manufacturing Co., 101 B.R. 944 (Bankr. M.D. Tenn. 1989) (secretarial overtime, word processing and proofreading expenses are overhead). Overhead is an expense incurred by the professional

---

or to be received for services rendered in or in connection with the case, and the particulars of any sharing of compensation or agreement or understanding therefor, except that details of any agreement by the applicant for the sharing of compensation as a member or regular associate of a firm of lawyers or accountants shall not be required. The requirements of this subdivision shall apply to an application for compensation for services rendered by an attorney or accountant even though the application is filed by a creditor or other entity.

in the maintenance of the office and is a component of the approved hourly rate to compensate the professional.

The bankruptcy court has an affirmative duty to make an independent evaluation of the reasonableness and allowability of all fees withstanding the failure of any party in interest to object. In re: Miami Optical, 101 B.R. 383 (Bankr. S.D. Fla. 1989); In re: Ross, 88 B.R. 471 (Bankr. M.D. Ga. 1988). Clerical services are office overhead and are not separately compensable, but are a

component of the hourly rate authorized for the professional. The request for approval of the application to the extent of Seventy Five and No/100 (\$75.00) Dollars charged for clerical services is ORDERED denied. Mr. W. Jan Jankowski, the Chapter 7 Trustee is authorized and ORDERED to pay the sum of Eight Hundred Fifty-Five and No/100 (\$855.00) Dollars to Hussey, Gay, Bell & DeYoung, Inc. as reasonable compensation for services rendered on behalf of the estate for the period ending August 26, 1990.

JOHN S. DALIS  
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia  
this 18th day of October, 1990.